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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 09 2007

EAC 05 089 53074

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time she filed the petition, the petitioner was a postdoctoral fellow at Johns Hopkins University (JHU). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

An introductory letter from counsel contains the following passage:

> [The petitioner] is working on an extremely important project, pursuing our recent, very exciting discovery that when DNA is introduced into a human or other mammalian cell, it becomes localized in specific places within that cell's nucleus. . . . [The petitioner] and her fellow researchers have made the amazing discovery that when these DNA sequences are made in a test tube and introduced to the cell, they go to sites that recapitulate the natural localization. This provides a much-needed system in which to investigate the localization process. Furthermore, the location of genes expressed by the third polymerase class was not previously known, but [the petitioner's] research group identified this location. . . . This newly identified location is especially intriguing, helping explain how products of this polymerase and another polymerase assemble [to] form a large structure responsible for all protein synthesis.

In the above passage, counsel specifically credits the petitioner with the discovery described therein. Counsel, however, is quoting from a letter by JHU Professor [redacted] and counsel has altered the wording of some key passages. In her original letter, Prof. [redacted] states:

> In my laboratory, [the petitioner] is working on an extremely important project, pursuing our recent, very exciting discovery that when DNA is introduced into a human or other mammalian cell, it becomes localized in specific places within that cell's nucleus. . . . We

> have now made the amazing discovery that when these DNA sequences are made in a test tube and introduced to the cell, they go to sites that recapitulate the natural localization. . . .
>
> [T]he next major advance will be to determine pathway and kinetics for different gene classes, and whether other known cellular structures participate in this localization process. This is the focus of [the petitioner's] research in my laboratory. . . . Although [the petitioner] has been in my laboratory for only one year, she is already able to reproduce localization by micro-injection, and she has studied the kinetics of the localization process.

Thus, Prof. [redacted] did not specifically credit the petitioner with "the amazing discovery" regarding gene localization. She never refers specifically to the petitioner, nor identifies specific tasks undertaken by the petitioner, when she describes that stage of the research. Rather, Prof. [redacted] states that "we," *i.e.*, her research team, made this discovery, and that the petitioner, who has worked at JHU "for only one year," is "pursuing" this discovery, *i.e.*, building upon it by "reproduc[ing] localization" and "stud[ying] the kinetics of the localization process." Only at this point does Prof. [redacted] name the petitioner as the individual performing specific tasks. In the absence of evidence clearly linking the petitioner with "the amazing discovery," such as the petitioner's co-authorship of a paper describing it, we can give no credence to counsel's claim that the petitioner was part of the initial discovery. The use of the ambiguous pronoun "we," and the vague reference to the gene localization discovery as "recent," are not sufficient to justify the inference that the petitioner herself participated in that stage of the research. We acknowledge Prof. [redacted] assertion that the petitioner's "expertise is critical for the continuation of these important projects," but we find that the available information does not warrant counsel's inference that the petitioner made the underlying discovery.

Prior to her work at JHU, the petitioner had worked at the Carnegie Institution of Washington. Professor [redacted], a member of the highly prestigious National Academy of Sciences, states:

> Because of her high qualifications, in 2000 I invited [the petitioner] to join my research group here at the Carnegie Institution as a postdoctoral fellow. In my laboratory she carried out sophisticated molecular and cell biological experiments, making use of the latest techniques for fluorescent analysis of molecules in fixed and living cells. . . . [The petitioner's] research centered on the structure and function of the cell nucleus. In what was unquestionably the best work she carried out in my laboratory, she devised a novel method for measuring the rate at which molecules move within the cell nucleus. She obtained results that are far superior to previous efforts in this field.

[redacted], an Assistant Professor at Northwestern University, states: "I met [the petitioner] two years ago in the meeting held in Cold Spring Harbor about 'dynamic organization of nuclear function.'. . . Since then, I have followed her research and been quite impressed by her intelligence and enthusiasm." [redacted] describes the petitioner's work in technical detail, and states: "Based on his [*sic*] past productivity, I can predict that he [*sic*] will continue to make highly significant contributions to the understanding of the nuclear organization and function."

The petitioner submits copies of several published articles she has co-authored. In terms of the impact that these articles have had, the petitioner shows that one of her articles has been cited twice by other researchers. Also, the petitioner's former collaborator and co-author, [redacted], has self-cited a number of articles co-authored by the petitioner.

On August 23, 2005, the director instructed the petitioner to submit additional evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director observed that the petitioner's initial submission contains little indication that the petitioner's work has earned significant notice outside of her own circle of collaborators and mentors.

In response, counsel asserts that the petitioner "has already been cited extensively by peer researchers." Evidence accompanying the response indicates that three of the petitioner's articles have been cited a total of fourteen times (five, five and four times, respectively). Of these fourteen citations, three are self-citations by the petitioner's co-authors, leaving eleven independent citations of three articles. This citation record appears to be moderate at best, and therefore, by itself, does not lend strong support to the waiver claim.

The director had requested letters from independent researchers who had cited the petitioner's work. Several such letters accompany the petitioner's response. For example [redacted] of the German Cancer Research Center, a former director of the German Society of Cell Biology, states that her group cited one of the petitioner's papers its authors "describe very precisely which special features are responsible [for the fact] that the cell nucleus (GV) of *Xenopus laevis* has become an ideal object for analyses of nuclear structure and function." She asserts that the petitioner's "paper is of enormous value for all scientists interested in structural aspects of the cell nucleus. . . . We cited her work because this work has pointed out the importance and accepta[nce] of this method."

Professor [redacted] of the University of Bologna, Italy, states:

> The corpus luteum (CL) is a transient endocrine organ that secretes progesterone to prepare the uterine environment for implantation, provided fertilization has occurred. . . . [The petitioner's] work paved the way for completely understanding the function of CL and treatment of infertility.
>
> We published a review article . . . [in which] we summarized the recent progress in research on angiogenesis in developing follicle and corpus luteum. We used a whole paragraph to introduce the findings in [the petitioner's] paper. Her paper . . . represents a huge contribution to this field.

Professo[redacted] of Yale University, a member of the National Academy of Sciences, states that the petitioner's "work made scientists look at the nucleolus in a different way and opened a new field." Professor [redacted] of Case Western Reserve University asserts that the petitioner's "finding completely changed the conventional view that the proteins in nucleoli are static. . . . There is no doubt that her research has significantly moved the field forward." Brown University Professor [redacted]i states: "what [the petitioner] has accomplished is extremely outstanding. . . . [The petitioner] is indispensable to nuclear

organization and function research." Other professors in the United States and elsewhere voice similar enthusiasm for the petitioner's work.

The director denied the petition on November 30, 2005, stating "there is little evidence that other researchers have relied upon the beneficiary's findings" and that the petitioner has not shown that her work constitutes "major advances that have enjoyed widespread implementation in the field." On appeal, the petitioner submits an updated citation record, showing that three of her papers have been cited six times each, which is not a significant increase from the previous submission.

We do not disagree with the director's findings about the low citation rate documented in the record, and if this documentation were the sole evidence presented in support of the petition, the petitioner's eligibility would not be readily apparent. Nevertheless, while the petitioner has not shown a great quantity of citations of her work, we cannot ignore the quality of those citations. Indeed, the director specifically asked the petitioner to submit letters from researchers who had cited her work, that request implying that compliance would help to establish eligibility. These letters, in this particular case, warrant particular attention.

Counsel argues, on appeal, that the director failed to give sufficient consideration to letters from "nine . . . independent experts, all attesting to the Beneficiary's significant contributions to her field." Counsel observes that three of the petitioner's witnesses belong to the National Academy of Sciences, and several others are department chairs at prestigious universities, and therefore their expertise is beyond legitimate dispute. These witnesses do not merely offer general praise for the petitioner's work or her potential for future achievements, nor do they merely claim to be impressed after reading her *curriculum vitae*. Rather, the witnesses demonstrate deep familiarity with the petitioner's work and its implications for their own continuing research, and many of them assert that the beneficiary's findings are not merely useful or original, but highly important. In short, these letters are not "run of the mill" recommendations from former professors and classmates, nor are they boilerplate endorsements issued simply as a favor or professional courtesy from one researcher to another. Instead, the letters offer every indication that the petitioner's work has attracted serious international attention at some of the highest echelons of her specialty.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.